

**PROVIDER REIMBURSEMENT REVIEW BOARD
HEARING DECISION**

ON THE RECORD
2002-D9

PROVIDER -
Continue Care Home Health III, Inc.

Provider No. 06-7256

vs.

INTERMEDIARY -
Blue Cross and Blue Shield Association/
Cahaba Government Benefit
Administrators

DATE OF HEARING-
December 6, 2001

Cost Reporting Period Ended -
December 31, 1997

CASE NO. 00-1180

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ISSUES:

1. Was the Intermediary's adjustment to reclassify cost to the Community Education cost center proper?
2. Was the Intermediary's adjustment to reclassify travel expense to the Community Education cost center proper?

STATEMENT OF THE CASE AND PROCEDURAL HISTORY:

Continue Care Home Health III, Inc., ("Provider") is an incorporated, proprietary home health agency located in Montrose, Colorado. In 1997 it was part of a chain organization with headquarters in Hollandale, Mississippi. Services provided include skilled nursing, physical therapy, occupational therapy, speech pathology, medical social services and home health aides. Upon review of the fiscal year 1987 Medicare cost report, the Intermediary reclassified community liaison costs performed by the Patient Care Coordinators to a non-reimbursable cost center. Additionally, travel costs incurred by the Patient Care Coordinator were also reclassified to a non-reimbursable cost center.

On August 17, 1999 the Intermediary issued a Notice of Program Reimbursement ("NPR") which reflected the impact of these reclassifications. On February 17, 2000, the Provider filed a timely appeal to the Provider Reimbursement Review Board ("Board") pursuant to 42 C.F.R. §§405.1835-.1841 and has met the jurisdictional requirements of these regulations. The estimated impact on Medicare reimbursement is approximately \$36,000.

The Provider was represented by Robert N. Warrington, Esquire, of Campbell, DeLong, Hagwood and Wade, LLP. The Intermediary was represented by Bernard M. Talbert, Esquire, of the Blue Cross and Blue Shield Association.

PROVIDER'S CONTENTIONS:

Issue 1. – Reclassification of Community Liaison Costs to a Non-reimbursable Cost Center

The Provider notes that there were two different Patient Care Coordinators during 1997. One served from January 1, 1997 to May, 1997, and the second served from May, 1997 through the end of the year. The Provider contends that the services performed by the Coordinators and referenced in the job description are allowable according to Medicare regulations and were supported by daily time sheets.

The Provider points to HCFA Pub. 15-1 § 2113.4 which states:

Educational and liaison activities permit the HHA to establish ties with the rest of the health care system. These activities are allowable to the extent that they are necessary for patient care and

do not duplicate services which are or should be performed by the hospital or SNF. These activities include:

Serving as an educational resource to the hospital or SNF concerning home health services. This includes conducting training for hospital or SNF staff and serving as consultant to the hospital or SNF for establishing home care policies and practices.

The Provider also references HCFA Pub. 15-1 § 2136.1 which states in part:

Costs of activities involving professional contacts with physicians, hospitals, public health agencies, nurses' associations, State and county medical societies, and similar groups and institutions, to apprise them of the availability of the provider's covered services are allowable. Such contacts make known what facilities are available to persons who require such information in providing for patient care, and serve other purposes related to patient care, e.g., exchange of medical information on patients in the provider's facility, administrative and medical policy, utilization review, etc. .

Issue 2. – Travel Expense of Patient Care Coordinator

A new Patient Care Coordinator joined the staff in May, 1997. From June 3 – 6, 1997, the chain held a meeting of all its patient care coordinators to inform them of new programs and regulatory developments. The Provider contends that attendance at that meeting is related to patient care and the Intermediary's disallowance of the airline ticket cost is without merit.

INTERMEDIARY'S CONTENTIONS:

Issue 1. – Reclassification of Community Education Costs to a Non-Reimbursable Cost Center

The Intermediary contends that its adjustment to reclassify community liaison costs to a non-reimbursable cost center was properly made in accordance with 42 C.F.R. § 413.20 (a) and HCFA Pub. 15-1 Sections 2113, 2136 and 2328. HCFA Pub. 15-1 § 2113.2 states in part:

Costs incurred by an HHA for personnel performing duties in the hospital or SNF which are primarily directed toward patient solicitation are unallowable costs for Medicare reimbursement purposes. . .

In addition, the Intermediary points to HCFA Pub. 15-1 § 2136.2 which states:

Costs of advertising of a general nature designed to invite physicians to utilize a provider's facilities in their capacity as

independent practitioners are not allowable.

The Intermediary contends that the activities under HCFA Pub. 15-1 § 2136 are applicable to activities such as physician contact and are not limited to just print and media advertising. The Intermediary points out that the following activities, per a review of the Patient Care Coordinator's job description/performance appraisal, do not relate to patient care. As such, they are considered to be geared toward increasing patient utilization:

Assist the Director of Patient Services and the Corporate representative in the development of goals and objectives relative to physician and community educational activities.

Serves as liaison between the agency and the community by actively participating in the Chambers of Commerce in assigned offices.

Promotes a favorable image of the agency by participating in the activities of community associations (e.g., American Heart Association, American Cancer Society, March of Dimes, etc.

Assists in the preparation, dissemination and presentation of new education materials, brochures, displays, etc.

The Intermediary also noted that the Patient Coordinator had an extensive background in sales. This leads the Intermediary to conclude that the Patient Coordinator was hired to pursue the types of activities highlighted above. The Intermediary agrees that time spent discussing patient care and obtaining physician signatures is an allowable part of the community liaison position. However, the time spent on community education activities is not allowable, in that it is not related to patient care but is geared toward increasing patient utilization.

The Intermediary also contends that the Provider did not furnish adequate descriptive time records that would have supported the patient care aspect of services rendered by the Patient Care Coordinators. Based on interviews, the Intermediary concluded that one of the Coordinators spent 75% of her time on nonallowable activities, while the second Coordinator spent 60% of her time on nonallowable activities. The Intermediary contends that 42 C.F.R. § 413.20(a) requires that providers "maintain sufficient financial records and statistical data for proper determination of costs payable under the program." Additionally, HCFA Pub. 15-1 §2113 states that the Provider "must be able to produce supporting records such as time logs to substantiate their statements pertaining to the time spent by HHA personnel in the various activities."

Finally, the Intermediary contends it was correct in creating a non-reimbursable cost center for those Community Education costs it deems to be nonallowable. HCFA Pub. 15-1 §2328 states, in pertinent part, that:

. . . nonallowable cost centers to which general service costs apply should be entered on the cost allocation worksheets after all General Service Cost Centers. General Service costs would then be distributed to the nonallowable cost centers in the routine “stepdown” process.

In further support of its position the Intermediary cites the following cases: Harriet Holmes Health Care Services v. Blue Cross and Blue Shield Association/Blue Cross and Blue Shield of Iowa, PRRB Dec. No. 97-D43, April 7, 1997, Medicare and Medicaid Guide (CCH) ¶ 45,169, Declined Review HCFA Administrator, May 15, 1997; In Home Health, Inc. v. Blue Cross and Blue Shield of California, PRRB Dec. No. 96-D36, June 10, 1996, Medicare and Medicaid Guide (CCH) ¶ 44,477, aff’d. in part/modified in part HCFA Administrator, August 4, 1996, Medicare and Medicaid Guide (CCH), ¶ 44,594.

In these decisions, the Board and the HCFA Administrator ruled that, “absent sufficient supporting documentation, several home health agencies’ claims for Medicare reimbursement of the costs of home care coordinators/community liaisons were properly disallowed in full . . . the Intermediaries were correct to disallow the HCC/CL costs to the extent that the Providers did not provide detailed documentation to distinguish between allowable and nonallowable costs . . . the Intermediaries correctly created a nonreimbursable cost center for nonallowable HCC/CL costs . . .”

Issue 2. – Travel Expense of Patient Care Coordinator

The Intermediary contends that the Provider’s workshop relates to the Coordinator’s activities that are related to community education. As such, this is a non-reimbursable expense. The Intermediary further contends that its adjustment to reclassify the travel expense to a non-reimbursable cost center was made in accordance with the Medicare provisions cited in Issue 1 above.

CITATION OF LAW, REGULATIONS AND PROGRAM INSTRUCTIONS:

1. Regulations – 42 C.F.R.:
 - §§ 405.1835-.1841 - Board Jurisdiction
 - § 413.20 - Financial Data and Reports
 - § 413.20(a) - General Program Instructions

2. Program Instructions- Provider Reimbursement Manual – Part 1(HCFA Pub. 15-1):

§ 2113	-	Home Health Coordination
§ 2113.2	-	Patient Solicitation Activities
§ 2113.4	-	Education and Liaison Activities
§ 2136	-	Advertising Costs – General
§ 2136.1	-	Allowable Advertising Costs
§ 2136.2	-	Unallowable Advertising Costs
§ 2328	-	Distribution of General Services Costs to Non Allowable Cost Centers

3. Case Law:

Harriet Holmes Health Care Services v. Blue Cross and Blue Shield Association/Blue Cross and Blue Shield of Iowa, PRRB Dec. No. 97-D43, April 7, 1997, Medicare and Medicaid Guide (CCH) ¶ 45,169, Declined Review HCFA Administrator, May 15, 1997.

In Home Health, Inc. v. Blue Cross and Blue Shield of California, PRRB Dec. No. 96-D36, June 10, 1996, Medicare and Medicaid Guide (CCH) ¶ 44,477, Aff'd in part/modified in part HCFA Administrator, August 4, 1996, Medicare and Medicaid Guide (CCH) ¶ 44,594.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION:

ISSUE 1.

Reclassification of Patient Care Coordinator Costs to a Non-reimbursable Cost Center

The Board, after consideration of the facts, parties' contentions, and evidence presented, finds and concludes that the Intermediary properly reclassified a portion of the salaries of the Provider's Patient Care Coordinators. The Board finds that the Provider employed one Patient Care Coordinator from January through May, 1997 and a new Coordinator from May through December, 1997. The Intermediary reviewed the claimed costs for the two employees and determined through interviews and an analysis of the job descriptions that a significant portion of the claimed costs was geared toward patient solicitation and improvement of the Provider's patient utilization. Specifically, the Intermediary concluded that nonallowable activities comprised 75% and 60%, respectively, of the Coordinators' time.

The Board notes that the Provider submitted time sheets purporting to support the Patient

Coordinator positions. However, the Board finds that the time sheets were primarily automobile mileage summaries. The codes and hours listed were vague and nothing was summarized in a format that would lend itself to audit. Thus, the information submitted was not sufficient to dispute the Intermediary's conclusion.

The Board therefore finds that the time identified by the Intermediary as related to patient solicitation is not allowable under HCFA Pub. 15-1, § 2113.4. Secondly, the Provider has not met the documentation requirements of 42 C.F.R. § 413.20.

The Board also finds that there is a valid basis for establishing a Non-reimbursable cost center. HCFA Pub. 15-1, Section 2328 states in part:

. . . nonallowable cost centers to which general service costs apply should be entered on the cost allocation worksheets after all General Service Cost Centers. General Service costs would then be distributed to the nonallowable costs centers in the routine "stepdown" process.

By establishing a non-reimbursable cost center, the Intermediary, in the instant case, was able to properly allocate some of the Provider's overhead to the appropriate non-reimbursable cost center.

ISSUE 2.

Reclassification of Travel Expense to a Non-reimbursable Cost Center:

The Board, after consideration of the facts, parties' contentions, and evidence presented, finds and concludes that the Intermediary properly reclassified travel expenses. The Board finds that the only documentation in the record consists of a receipt from Delta Travel in the amount of \$1,389. While this documents the expense, there is no documentation in the record, such as a course agenda, to support the Provider's position.

The Board finds nothing in the record to dispute the Intermediary's conclusion. Absent any documentation, the Board finds that the travel expenses are related to those Community Education activities that are unallowable.

DECISION AND ORDER:

ISSUE 1.

Reclassification of Patient Care Coordinator Costs:

The Intermediary's adjustment reclassifying a portion of the Provider's Patient Care Coordinator costs and establishing a non-reimbursable cost center was proper. The Intermediary's adjustment is affirmed.

ISSUE 2.

Reclassification of Travel Expense:

The Intermediary's adjustment reclassifying travel expense and establishing a non-reimbursable cost center was proper. The Intermediary's adjustment is affirmed.

BOARD MEMBERS PARTICIPATING

Irvin W. Kues
Henry C. Wessman, Esq.
Stanley J. Sokolove
Gary B. Blodgett, D.D.S.

Date of Decision: February 21, 2002

FOR THE BOARD

Irvin W. Kues
Chairman